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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/577,039

04/24/2006

Anders Delen

1027651-000515

2309

21839 7590 08/25/2008  
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EXAMINER

GERRITY, STEPHEN FRANCIS

ART UNIT

PAPER NUMBER

3721

NOTIFICATION DATE

DELIVERY MODE

08/25/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/577,039	<b>Applicant(s)</b> DELEN ET AL.	
	<b>Examiner</b> Stephen F. Gerrity	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-11 and 13-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/24/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Election/Restrictions**

1. Applicant's election with traverse of the invention of Group I (claims 1-6, 9-11 and 13-17) in the reply filed on 2 May 2008 is acknowledged. The traversal is on the ground(s) that a lack of unity requirement was not made in the corresponding PCT application, and that the search required for the elected claims would extend into those areas where the other claims would be searched. This is not found persuasive because while the lack of unity requirement may have not been made in the corresponding PCT application it can be made here and such fails to point out how the lack of unity requirement made in the previous Office action is in error; and furthermore, the search required for the other claims would at least cover method subclasses in class 53 which do not necessarily need to be searched for the elected apparatus claims.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 7, 8 and 12 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2 May 2008.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### **Priority**

4. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. § 119. The certified copy has been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

### **Information Disclosure Statement**

5. Receipt is acknowledged of an Information Disclosure Statement, filed 24 April 2006, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

### **Drawings**

6. The drawings are objected to because:
- a. the solid black found in figure 2, elements 8, 9 and 11 is improper;
  - b. figures 4 and 5 must not be connected by an arrow; and
  - c. the sheet with figure 6 includes a separate detail which must be given a separate figure number and not connected to figure 6 by an arrow, further this new separate figure will require the addition of a separate brief drawing description.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

Art Unit: 3721

and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### **Specification**

7. The abstract of the disclosure is objected to because of the use of legal phraseology, i.e. "said" (line 10). Correction is required. See MPEP § 608.01(b).
8. The disclosure is objected to because the reference to claim numbers in the written description is improper, the written description must be complete in and of itself and not incorporate by reference the subject matter of a claim or claims. Applicant's attention is directed to page 3, line 29. Appropriate correction is required.

### **Claim Rejections - 35 USC § 112**

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-6, 9-11 and 13-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3721

Claim 1, lines 14 and 15, it is unclear as to which of the two operating elements applicant is referring.

Claim 4 includes subject matter which lacks proper antecedent basis in claim 1 -- the limitations lacking proper antecedent basis are introduced in claim 2. It is suggested that claim 4 be canceled because if claim 4 is amended to depend from claim 2 it would be a duplicate of claim 13 which recites identical subject matter and already depends from claim 2.

Claims 6 and 9 each recite a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) which makes each of the claims indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in Ex parte Wu, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of Ex parte Steigewald, 131 USPQ 74 (Bd. App. 1961); Ex parte Hall, 83 USPQ 38 (Bd. App. 1948); and Ex parte Hasche, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 6 and 9 each recites the broad recitation "said gap being of a width which is less than a total thickness...", and the claim also recites "and preferably less than the total thickness ... which are obtained ... which is defined

Art Unit: 3721

by a force-restricting coupling member" which is the narrower statement of the range/limitation.

Claims 13 and 14, the language "on the one hand" and "on the other hand" renders the claim vague and indefinite because language of this sort fails to distinctly set forth the structure of the invention.

These and any other informalities should be corrected so that the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

### **Claim Rejections - 35 USC § 102**

**11.** The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**12.** Claims 1, 4-6, 9-11 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller (US 2,751,965).

The Miller reference discloses a sealing apparatus including an abutment 70 and a sealing unit 71. The abutment and the sealing unit are moved towards and away from one another by the use of the linkage system as seen best in figs. 3, 4 and 8. The linkage system includes an operating unit 36, an interconnection member 38, a link 28 connected to a second operating element 20 which is connected to the sealing unit 71, a link 29 connected to the elongate element 21 which is connected to the abutment 70 through member 19, and the elongate element 21 is connected to first operating

Art Unit: 3721

element 24. The second operating element 20 is slidably connected to the elongate element 21. The force-restricting coupling member is read as stop element 124 which is disposed to restrict the force between the operating element 24 and the sealing unit 71, and which limits the size of the gap between the abutment and the sealing unit when the two approach one another.

The functional recitations concerning the speed of movement and the transverse movement of the package and speed thereof relative to the movement speed of the abutment and sealing unit of claims 10 and 11 are considered to be fully capable of being performed by the Miller apparatus.

#### **Allowable Subject Matter**

**13.** Claims 2, 3 and 13-16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### **Conclusion**

**14.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed on the attached form (PTO-892) are cited to show various sealing devices. All are cited as being of interest and to show the state of the prior art.

**15.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 9:30-6:00.



Art Unit: 3721

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen F. Gerrity/  
Primary Examiner  
Art Unit 3721

18 August 2008